

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
WADSON AUGUSTE,

Index No.

Plaintiff,

VERIFIED COMPLAINT

-against-

THE CITY OF NEW YORK and RUTH FADL,

Defendants.
-----X

Plaintiff, by his attorneys, Jaroslawicz & Jaros LLC, complaining of the defendants,
upon information and belief, allege as follows:

THE PARTIES

1. At all times hereinafter mentioned, plaintiff is a resident of the State of New York, County of Kings.
2. At all times hereinafter mentioned, plaintiff owned a motor vehicle bearing New York license plate number EXV9923.
3. At all times hereinafter mentioned, plaintiff was operating his motor vehicle.
4. At all times hereinafter mentioned, the defendant The City of New York ("CNY") is a municipality, duly organized and existing under and by virtue of the laws of the State of New York.
5. At all times hereinafter mentioned, defendant CNY, through its Police Department, owned a motor vehicle bearing New York license plate number 5100.

6. At all times hereinafter mentioned, defendant Ruth Fadl ("Fadl") was operating the aforementioned vehicle.

7. At all times hereinafter mentioned, defendant Fadl was operating the aforementioned vehicle within the scope of his employment with the CNY.

8. At all times hereinafter mentioned, defendant Fadl was acting as an agent, servant and/or employee of defendant CNY.

THE UNDERLYING FACTS

9. At all times hereinafter mentioned, Eastern Parkway and Utica Avenue was and is a public thoroughfare in the State of New York, County of Kings.

10. On or about October 29, 2013, plaintiff was operating his motor vehicle in the aforementioned vicinity.

11. Due to the defendants' recklessness, carelessness and negligence, plaintiff was caused to suffer severe and permanent personal injuries when his vehicle was struck in the rear while stopped at a red light.

12. Prior to the commencement of this action and within ninety days of the occurrence complained of herein, to wit, on January 8, 2014, plaintiff served a Notice of Claim upon the defendants.

13. That the City of New York requested oral examination of the plaintiff, and the plaintiff so appeared on March 14, 2014.

14. That the City of New York never requested a physical examination of the plaintiff and plaintiff was willing to appear if so requested.

15. Plaintiff has complied with Section 50 *et seq.* of the General Municipal Law and is therefore permitted to bring this action.

16. That this action is being commenced within a year and ninety days of the occurrence complained of and is thus timely brought.

17. Plaintiff in this action has suffered serious injuries as defined by the No-Fault Insurance Law of the State of New York.

18. That plaintiff in this action is not seeking to recover any monies which are paid or should be paid through No-Fault Insurance.

19. If the plaintiff executes a release in this action, plaintiff does not intend to release any claims by any insurance carrier for any monies paid for no-fault benefits or any claims for subrogation or any claims other than the plaintiff's own claims for pain and suffering and the amount of special damages exceeding those paid under No-Fault.

20. The amounts sought herein exceed the jurisdiction of the lower courts.

AS AND FOR A FIRST CAUSE OF ACTION

21. Defendant, City of New York ("City"), by its agents, servants and employees, was reckless, careless, and negligent in the operation of a police vehicle, plate number 5100, a 2010 Ford sedan; in striking plaintiff's car in the rear; in failing to see or disregarding what was there to be seen; in failing to maintain a safe and sufficient distance;

in operating the vehicle at a speed greater than was reasonably safe for the traffic conditions; in operating vehicle without due regard for the safety of all persons, such as the claimant; in failing to keep the vehicle under proper control; in violating the applicable statutes, rules and regulations; in failing to obey the rules of the road; in seeking to cover up what had occurred; in attempting to intimidate claimant; the defendant's vehicle was not an authorized vehicle as contemplated by Vehicle & Traffic Law ("VTL") § 1104, and was not at the time being operated under circumstances that constitute an emergency; City is liable for the negligence of the vehicle operator, defendant, Ruth Fadl, pursuant to VTL § 388 and pursuant to the doctrine of respondeat superior; and defendant was otherwise reckless, careless and negligent.

22. Defendant, Ruth Fadl, was reckless, careless, and negligent in the operation of a police vehicle, plate number 5100, a 2010 Ford sedan; in striking plaintiff's car in the rear; in failing to see or disregarding what was there to be seen; in failing to maintain a safe and sufficient distance; in operating the vehicle at a speed greater than was reasonably safe for the traffic conditions; in operating vehicle without due regard for the safety of all persons, such as the claimant; in failing to keep the vehicle under proper control; in violating the applicable statutes, rules and regulations; in failing to obey the rules of the road; in seeking to cover up what had occurred; in attempting to intimidate claimant; the defendant's vehicle was not an authorized vehicle as contemplated by Vehicle & Traffic

Law ("VTL") § 1104, and was not at the time being operated under circumstances that constitute an emergency; and defendant was otherwise reckless, careless and negligent.

23. As a result of defendants' negligence, plaintiff was caused to suffer severe and permanent personal injuries, including injury to cervical and lumbar spine; reduced range of motion, cervical and lumbar spine; herniated disc, L4-L5 and C6-C7, with impingement; disc bulge L5-S1, C4-C5, C5-C6, with impingement; straightening of cervical spine lordosis; spasm, cervical spine; required physical therapy; difficulty sleeping; required diagnostic testing; required medical care and attention and will require medical care and attention in the future; extreme pain and suffering; mental anguish and distress; unable to attend to regular duties and vocation and avocation; plaintiff has been otherwise damaged, and all of which damages are permanent in nature and continuing into the future.

24. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

25. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7) in that the defendants acted with reckless disregard for the safety of others.

26. By reason of the foregoing, plaintiff is entitled to recover all of his damages from the defendants.

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, to recover all damages from the defendants, all together with the costs and disbursements of this action.

JAROSLAWICZ & JAROS, LLC
Attorneys for Plaintiff(s)
225 Broadway, 24th Floor
New York, New York 10007
(212) 227-2780

By: 

David Jaroslawicz

DAVID JAROSLAWICZ, a member of the firm of JAROSLAWICZ & JAROS, attorneys for the plaintiff(s) in the within action, duly admitted to practice in the Courts of the State of New York, affirms the following statements to be true under the penalties of perjury, pursuant to Rule 2016 of the CPLR:

That he has read the foregoing **Complaint** and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true.

Affiant further states that the source of his information and the grounds of his belief are derived from the file maintained in the normal course of business of the attorneys for the plaintiff(s).

Affiant further states that the reason this affirmation is not made by the plaintiff(s) is that at the time this document was being prepared, the plaintiff(s) was (were) not within the County of New York, which is the County where the attorney for the plaintiff(s) herein maintains his office.

Dated: New York, New York
March 18, 2014



DAVID JAROSLAWICZ

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

WADSON AUGUSTE,

Plaintiff,

-against-

THE CITY OF NEW YORK and RUTH FADL,

Defendants.

Summons & Verified Complaint

LAW OFFICES OF
JAROSLAWICZ & JAROS LLC
225 BROADWAY, 24TH FLOOR
NEW YORK, NEW YORK 10007
(212) 227-2780
